

or use of chemical or biological weapons by any parties to the transaction;

(viii) The types of assurances or guarantees against the design, development, production, stockpiling, or use of chemical or biological weapons that are given in a particular case, including any relevant assurances provided by the importing country or the end-user;

(ix) The applicability of other multilateral export control or nonproliferation agreements (*e.g.*, the Chemical Weapons Convention and the Biological and Toxin Weapons Convention) to the transaction; and

(x) The existence of a pre-existing contract.

(3) BIS will review license applications in accordance with the licensing policy described in paragraph (b)(1) of this section for items not described in paragraph (a) of this section that:

(i) Require a license for reasons other than short supply; *and*

(ii) Could be destined for the design, development, production, stockpiling, or use of chemical or biological weapons, or for a facility engaged in such activities.

(c) *Contract sanctity.* Contract sanctity dates are set forth in Supplement No. 1 to part 742. Applicants who wish that a preexisting contract be considered in reviewing their license applications must submit documentation sufficient to establish the existence of such a contract.

(d) *Australia Group.* The Australia Group, a multilateral body that works to halt the spread of chemical and biological weapons, has developed common control lists of items specifically related to chemical and biological weapons. Australia Group members are listed in Country Group A:3 (see Supplement No. 1 to part 740 of the EAR). Controls on items listed in paragraph (a) of this section are consistent with lists agreed to in the Australia Group.

(e) *License application requirements and instructions.* (1) General instructions for completing Form BIS-748P, Multipurpose Application, are provided in Supplement No. 1 to Part 748 of the EAR. When preparing applications for items controlled for chemical and biological reasons, pay particular attention to the instructions contained in

paragraphs (e) and (f) of the Supplement that apply to entering “Quantity” and “Units,” respectively, on license applications. Paragraphs (e) and (f) require that, if an item is licensed in terms of “\$ value” (refer to the “Unit” paragraph within the appropriate ECCN), the unit of quantity commonly used in the trade must also be shown on the license application. In such cases, Section 750.7 of the EAR provides that the quantity of commodities authorized is limited by the total dollar value as shown on the approved license and not by the quantity specified thereon. Although the EAR do not place a specific limitation on quantity in such cases, the total quantity that may be exported or reexported is limited, to a significant degree, by the fact that the EAR do not provide a shipping tolerance for items licensed by “dollar value” (see Section 750.11(b)(1) of the EAR) and require that the “unit price” indicated on the license application reflect the fair market value of the items listed on the application (see paragraph (g) of Supplement No. 1 to part 748 of the EAR).

(2) Unique application and submission requirements for chemicals, medicinals, and pharmaceuticals are described in paragraph (a) of Supplement No. 2 to part 748 of the EAR.

[61 FR 12786, Mar. 25, 1996, as amended at 62 FR 25458, May 9, 1997; 63 FR 42228, Aug. 7, 1998; 64 FR 27142, May 18, 1999; 64 FR 28909, May 28, 1999; 66 FR 49524, Sept. 28, 2001; 67 FR 37982, May 31, 2002; 67 FR 55598, Aug. 29, 2002; 68 FR 34529, June 10, 2003; 68 FR 67031, Dec. 1, 2003; 69 FR 42865, July 19, 2004; 69 FR 77893, Dec. 29, 2004; 70 FR 2349, Jan. 13, 2005; 70 FR 19690, Apr. 14, 2005; 71 FR 33619, June 12, 2006; 71 FR 67788, Nov. 24, 2006]

§ 742.3 Nuclear nonproliferation.

(a) *License requirements.* Section 309(c) of the Nuclear Non-Proliferation Act of 1978 requires BIS to identify items subject to the EAR that could be of significance for nuclear explosive purposes if used for activities other than those authorized at the time of export or reexport. ECCNs on the CCL that include the symbol “NP 1” or “NP 2” in the “Country Chart” column of the “License Requirements” section identify items that could be of significance for nuclear explosive purposes and are

therefore subject to licensing requirements under this part and under section 309(c) of the Nuclear Non-Proliferation Act of 1978. These items are referred to as “The Nuclear Referral List” and are subject to the following licensing requirements:

(1) If NP Column 1 of the Country Chart (Supplement No. 1 to part 738 of the EAR) is indicated in the appropriate ECCN, a license is required to all destinations except Nuclear Suppliers Group (NSG) member countries (Country Group A:4) (see Supplement No. 1 to part 740 of the EAR).

(2) If NP Column 2 of the Country Chart (Supplement No. 1 to part 738 of the EAR) is indicated in the applicable ECCN, a license is required to Country Group D:2 (see Supplement No. 1 to part 740 of the EAR) except India.

(3) Other nuclear-related license requirements are described in §§ 744.2 and 744.5 of the EAR.

(b) *Licensing policy.* (1) To implement the controls in paragraph (a) of this section, the following factors are among those used to determine what action should be taken on individual applications:

(i) Whether the items to be transferred are appropriate for the stated end-use and whether that stated end-use is appropriate for the end-user;

(ii) The significance for nuclear purposes of the particular item;

(iii) Whether the items to be exported or reexported are to be used in research on, or for the development, design, manufacture, construction, operation, or maintenance of, any reprocessing or enrichment facility;

(iv) The types of assurances or guarantees given against use for nuclear explosive purposes or proliferation in the particular case;

(v) Whether any party to the transaction has been engaged in clandestine or illegal procurement activities;

(vi) Whether an application for a license to export or reexport to the end-user has previously been denied, or whether the end-user has previously diverted items received under a general license, a License Exception, or a validated license to unauthorized activities;

(vii) Whether the export or reexport would present an unacceptable risk of

diversion to a nuclear explosive activity or unsafeguarded nuclear fuel-cycle activity described in § 744.2(a) of the EAR; and

(viii) The nonproliferation credentials of the importing country, based on consideration of the following factors:

(A) Whether the importing country is a party to the Nuclear Non-Proliferation Treaty (NPT) or to the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco) or to a similar international legally-binding nuclear nonproliferation agreement;

(B) Whether the importing country has all of its nuclear activities, facilities, or installations that are operational, being designed, or under construction under International Atomic Energy Agency (IAEA) safeguards or equivalent full scope safeguards;

(C) Whether there is an agreement for cooperation in the civil uses of atomic energy between the U.S. and the importing country;

(D) Whether the actions, statements, and policies of the government of the importing country are in support of nuclear nonproliferation and whether that government is in compliance with its international obligations in the field of non-proliferation;

(E) The degree to which the government of the importing country cooperates in non-proliferation policy generally (e.g., willingness to consult on international nonproliferation issues); and

(F) Information on the importing country’s nuclear intentions and activities.

(2) In addition, BIS will review license applications in accordance with the licensing policy described in paragraph (b) of this section for items *not* on the Nuclear Referral List that:

(i) Require a license on the CCL for reasons other than “short supply;” and

(ii) Are intended for a nuclear related end-use or end-user.

(3) For the People’s Republic of China, the general licensing policy for applications for those items that would make a direct and significant contribution to nuclear weapons and their delivery systems is extended review or denial.

(c) *Contract sanctity.* Contract sanctity provisions are not available for license applications reviewed under this section.

(d) *Nuclear Suppliers Group.* Most items on the Nuclear Referral List that require a license under NP Column No. 1 on the Country Chart (see Supplement No. 1 to part 738 of the EAR) are contained in the Annex to the “Guidelines for Transfers of Nuclear-Related Dual-Use Equipment, Material, and Related Technology” (the Annex), as published by the International Atomic Energy Agency in INFCIRC/254/Revision 1/Part 2. The adherents to INFCIRC/254/Revision 1/Part 2, which includes the Nuclear Suppliers Guidelines, have agreed to establish export licensing procedures for the transfer of items identified in the Annex. Items that are listed as requiring a license under NP Column No. 2 on the Country Chart (see Supplement No. 1 to part 738 of the EAR) are not included in the Annex and are controlled only by the United States.

[61 FR 12786, Mar. 25, 1996, as amended at 70 FR 51252, Aug. 30, 2005]

§ 742.4 National security.

(a) *License requirements.* It is the policy of the United States to restrict the export and reexport of items that would make a significant contribution to the military potential of any other country or combination of countries that would prove detrimental to the national security of the United States. Accordingly, a license is required for exports and reexports to all destinations, except Canada, for all items in ECCNs on the CCL that include NS Column 1 in the Country Chart column of the “License Requirements” section. A license is required to all destinations except Country Group A:1 and cooperating countries (see Supplement No. 1 to part 740), Bulgaria, Czech Republic, Estonia, Hungary, Iceland, Latvia, Lithuania, Poland, Romania, Slovakia, and Slovenia for all items in ECCNs on the CCL that include NS Column 2 in the Country Chart column of the “License Requirements” section. The purpose of the controls is to ensure that these items do not make a contribution to the military potential of countries in Country Group D:1 (see Supplement

No. 1 to part 740 of the EAR) that would prove detrimental to the national security of the United States. License Exception GBS is available for the export and reexport of certain national security controlled items to Country Group B (see § 740.4 and Supplement No. 1 to part 740 of the EAR).

(b) *Licensing policy.* (1) The policy for national security controlled items exported or reexported to any country except a country in Country Group D:1 (see Supplement No. 1 to part 740 of the EAR) is to approve applications unless there is a significant risk that the items will be diverted to a country in Country Group D:1.

(2) Except for those countries described in paragraphs (b)(5) through (b)(7) of this section, the general policy for exports and reexports of items to Country Group D:1 (see Supplement No. 1 to part 740 of the EAR) is to approve applications when BIS determines, on a case-by-case basis, that the items are for civilian use or would otherwise not make a significant contribution to the military potential of the country of destination that would prove detrimental to the national security of the United States.

(3) To permit such policy judgments to be made, each application is reviewed in the light of prevailing policies with full consideration of all aspects of the proposed transaction. The review generally includes:

- (i) An analysis of the kinds and quantities of items to be shipped;
- (ii) Their military or civilian uses;
- (iii) The unrestricted availability abroad of the same or comparable items;
- (iv) The country of destination;
- (v) The ultimate end-users in the country of destination; and
- (vi) The intended end-use.

(4) Although each proposed transaction is considered individually, items described in Advisory Notes on the Commerce Control List are more likely to be approved than others.

(5) In recognition of efforts made to adopt safeguard measures for exports and reexports, Kazakhstan, Mongolia, and Russia are accorded enhanced favorable consideration licensing treatment.